IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: .06.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Appeal Suit No.596 of 1991

1. Manickam
2. M.Padmanabhan
3. Vennila
4. M.Devaraj
5. Usha
6. M.Ravi

... Appellants/Defendants 1 to 6

Vs.

1. Amirtham ... Ist Respondent/Plaintiff

2. Regional Transport Officer,
Periyar District, Erode.

3. Bannari Mariamman Sugars Ltd,
Alathukombai, Sethumugai Post, D.G. Pudur,
Periyar Distrist.

4. State Bank of India,
A.D.B.Sathyamangalam,
Periyar District. ... Respondents 2 to 4
/Defendants 7 to 9

PRAYER: First Appeal against the Judgment and decree of learned Subordinate Judge, Gobichettipalayam, dated 10.05.1991 passed in O.S.No.126 of 1986.

For Appellant : Mr.K.Duraisamy S.C.
for R.T.Duraisamy
Appellants 1,3 to 5
for M.Rajaraman for A2 & 6

For Respondent : Mr.M.Venkatachalapathy S.C.
for S.M.Loganathan for R1
Mr.V.Ravi Spl.G.P. For R2
R3 & R4 - Not Appeared

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J U D G M E N T

Defendants 1 to 6 before the Trial Court are the appellants. The first respondent has filed the suit for partition and allotment of 1/7th share in the suit properties, which are consisting of five items out which the first four items are relating to immovable properties and the 5th item relates to a Tractor and the 6th item is the amount due from Bannari Amman Sugars Ltd., arrayed as 8th defendant.

2. According to the plaintiff, she is the eldest daughter of late Muthusamy Naidu, the first defendant being the wife of late Muthusamy Naidu and defendants 2 to 6 are his sons and daughters. The said Muthusamy Naidu died intestate on 27.01.1986 leaving behind the plaintiff and defendants 1 to 6. The suit properties are the self acquired properties of the said Muthusamy Naidu apart from the fact that he had also properties from his father in law. Item No.2 was purchased by Muthusamy Naidu in the year 1972 in the name of his wife the first defendant. That was the sale deed dated 04.06.1972 marked as Ex.A.2. Item No.3 was purchased by Muthusamy Naidu in the name of his son the second defendant on 21.06.1973 copy of which was marked as Ex.A.29 and the original marked on the side of the defendants as Ex.B.3. All the said properties were purchased by Muthusamy Naidu since first and second defendants had no independent income. Apart from the properties the deceased Muthusamy Naidu was having several jewels movables and cash. By his income Muthusamy Naidu has developed the property mentioned in item no.4 constructing a house.

3. According to the plaintiff, after the death of the said Muthusamy Naidu, the plaintiff as well as defendants 1 to 6 are jointly in enjoyment of all the properties, entitled for equal share. After the death of Muthusamy Naidu defendants 1,2,4 and 6 have created a partition deed dated 11.04.1986 copy of which was marked on the side of the plaintiff as Ex.A.6 and the original marked on the side of the defendants as Ex.B.4, in respect of item no.2 in the scheduled mentioned properties, which according to the plaintiff is not valid. The plaintiff have issued a legal notice on 10.07.1986 marked as Ex.A.3 for which defendants 1,2,4 and 6 have given their reply on 22.07.1986 marked as Ex.A.4 and thereafter, the suit for partition was filed.

4. The second defendant has filed the written statement as adopted by 3rd and 5th defendants. While the relationship between the parties as stated by the plaint are admitted, it was the case of the second defendant that Muthusamy Naidu was really a joint family member upto 04.05.1961 along with his brothers and his mother and it was on 04.05.1961 there was a partition deed among them marked as Ex.B.1. It was in the said partition deed late Muthusamy Naidu was allotted 4.73 acres in Ekarai Thathapalli Village which is mentioned as the second portion of item no.1 in the suit schedule property. It was out the income from the said

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properties by agricultural operation late Muthusamy Naidu purchased another three acres of land mentioned as a first portion of item no.1 in the plaint schedule under a registered sale deed dated 29.08.1962 marked as Ex.A.1. Therefore, according to the second defendant both the portions of the first item of property are joint family properties with ancestral nucleus.

5. According to the second defendant, item no.2 of the schedule property is the own property of the first defendant and the said property was originally purchased by the father of the first defendant Thirumalaisamy Naidu under a registered sale deed dated 29.08.1957. It was under a registered sale deed dated 04.06.1972 marked as Ex.A.2 the father of the first defendant Thirumalaisamy Naidu has sold item no.2 of the suit schedule property to the first defendant and the purchase was from and out of the contribution by the first defendant herself and Muthusamy Naidu has not paid any amount and after the purchase the first defendant was in possession of the said property enjoying the same and due to her old age she has allowed her three sons namely, defendants 2,4 and 6 to enjoy the property, as per the registered partition deed dated 11.04.1986 marked as Ex.A.6 (Original Ex.B.4).

6. The second defendant has purchased the third item of the suit schedule property from Govindarajulu Naidu under a sale deed dated 21.06.1973 marked as Ex.A.29 (Original Ex.B.3) and Muthusamy Naidu has not contributed any amount. According to the second defendant item no.4 of the suit schedule property is a house in which defendants 2,4 and 6 are residing with their mother the first defendant. The plaintiff being a daughter and having married living with her husband is not entitled for partition independently unless and until the other male members decided to partition.

7. The Tractor mentioned in the item no.5 was purchased by the second defendant out of his own income. After 1980 Muthusamy Naidu who has undergone a heart attack was confined to bed. During the lifetime of Muthusamy Naidu item No.1 of the suit schedule property was divided by oral partition at the instance of Gopalsamy Naidu and accordingly, defendants 2,4 and 6 were allotted their shares and accordingly the said portion of the properties were enjoyed. The defendants 2,4 and 6 who have enjoyed the properties by oral partition have jointly mortgaged with the State Bank of India, namely, the 9th defendant for purchasing the Tractor which is mentioned in the 5th schedule and the loan amount has been paid by the said defendants and the said defendants have obtained the transfer which belong to the defendants absolutely.

8. According to the second defendant, he has obtained jewel loan from Indian Overseas Bank apart from 4th and 6th defendant who have also obtained such loan and the amount is still due and the total loan amount comes to Rs.93,402/. The second defendant has conducted the marriage of the 3rd defendant during the lifetime of the father Muthusamy Naidu. That

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apart, after the death of Muthusamy Naidu the second defendant has conducted the marriage of the 5th defendant spending Rs.1,29,486.14 paise. That apart, according to the second defendant he has also obtained some loans, which are outstanding to be paid. Therefore it is denied that the suit properties are the absolute properties of late Muthusamy Naidu. It is also the alternative plea of the second defendant that in the event of the court coming to a conclusion that item no.1 of the suit schedule property is the joint family property and the oral partition between defendants 2,4 and 6 are not proved, the plaintiffs are entitled only for 1/28th share in the said property.

9. The plaintiffs have filed a reply statement reiterating that Muthusamy Naidu was having independent income and he was doing shandy business besides and he used to sell and buy bulls at Puliyampatti Sandai. He has also been carried on agricultural operation enjoying the entire properties. The plaintiffs have also denied the various averments made by the second defendant in the written statement. It is with the above pleadings the parties went to trial.

10. The Trial Court framed various issues as to whether the suit schedule properties are the self acquired properties of the Muthusamy Naidu, as to whether the partition deed dated 11.04.1986 entered between defendants 1,2,4 and 6 in respect of item no.2 of suit schedule property is binding on the plaintiff, as to whether Muthusamy Naidu had any other business other than agriculture, as to whether the first item of the suit schedule property is the ancestral property of the Muthusamy Naidu, as to whether the second item of the suit schedule property even though purchased in the name of the first defendant it belongs to Muthusamy Naidu as his own property, as to whether the third item of the suit schedule property even though purchased in the name of the second defendant belong to Muthusamy Naidu as his independent property, as to whether the plaintiff is entitled to partition in respect of the fourth item of the suit schedule property, as to whether the oral partition stated to have been entered between defendants 2,4 and 6 is true, whether it is true that the 5th item of the suit schedule property which is a Tractor was purchased by the second defendant and as to whether the plaintiff is entitled for partition if so what is the share?

11. The plaintiff was examined as P.W.1 apart from two other witnesses. On the side of the plaintiff and marked 35 documents as Ex.A.1 to A.35. On the side of the defendants first and second defendants were examined as D.W.1 and D.W.2 respectively apart from three other witnesses and 22 documents were marked as Ex.B.1 to B.22. On analysis of the entire issues, pleadings and documents the Trial Court has passed a decree of partition granting 1/7th share to the plaintiff in respect of the first portion of the item no.1, in respect of item no.2, item no.4, item no.5

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and item no.6 and granting 1/28th share to the plaintiff, in respect of the second portion of the item no.1 covered under Ex.B.1 partition deed and ultimately holding that as far as item no.3 it belongs to the second defendant as his individual property.

12. It is as against the said judgement defendants 1 to 6 have filed the present first appeal. It is relevant to point out that in respect of the item no.3 of the suit schedule property which was decided by the Trial court to belong absolutely to the second defendant, the plaintiff has not filed any cross appeal and therefore, in respect of item no.3 the judgement of the Trial Court in dismissing the suit for partition has become final.

13. Mr.K.Duraisamy, learned Senior Counsel appearing for the appellants 1,3 to 5 would contend that the claim of the plaintiff for partition in respect of ancestral properties is not legal. That apart, it is the contention that the plaintiff has not proved that Muthusamy Naidu was having independent source of income and there has been a contradiction in evidence between P.W.1 and P.W.2 while P.W.1 states that Muthusamy Naidu was doing cattle business from 1954 for 10 years, P.W.2 would say that the business was carried till 1975. He would also submit that oral partition entered between defendants 2,4 and 6 in respect of the first item of suit schedule property is usual. He would also submit that in respect of the second item of property which stands in the name of the first defendant, there was in fact a written partition between defendants 1,2,4 and 6 on 11.04.1986 marked as Ex.B.4 and based on the written partition the defendants have been enjoying the portions allotted to them separately as evidenced by Ex.B.9 to B.14 and the factum of said oral partition has been proved by an independent witness examined as P.W.4 one Nanjunda Gounder. While the Trial Court has considered that item no.3 of the suit schedule property belonged absolutely to the second defendant since the sale deed in respect of the said property marked as Ex.B.3 stands in the name of the second defendant, the Trial Court has failed to consider that under Ex.B.4 sale deed dated 11.04.1986 in respect of item no.2 the same stands in the name of Manickammal the first defendant.

14. According to the learned Senior Counsel even if the consideration was paid by Muthusamy Naidu in respect of item no.2 of the property by purchasing the same in the name of his wife, the first defendant, the share to which the plaintiff would be entitled would be only 1/28th share and not 1/7th share which is wrongly given. According to the learned Senior Counsel, in respect of the Tractor item no.5 the Trial Court has wrongly come to a conclusion as if the second defendant has played a fraud in effecting transfer by producing a consent letter from P.W.1 simply on the ground that the plaintiff used to sing in Tamil whereas the letter contains signature in English which was produced as Ex.X.5.

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15. On the other hand, Mr.M.Venkatachalapathy, learned Senior counsel appearing for the first respondent/plaintiff would submit that when the plaintiff has given a legal notice on 10.07.1986 marked as Ex.A.3 the defendants in the reply statement dated 22.07.1986 marked as Ex.A.4 have not chosen to state anything about the said oral partition. He would also submit that even in the partition deed stated to have been executed in respect of item no.2 between defendants 1,2,4 and 6 marked as Ex.B.4 dated 11.04.1986 there is no reference about the oral partition at all. He would also refer to the evidence on the side of the defendants especially D.W.4 who has stated that the first defendant was not having independent income. He would also submit that the various documents marked as Ex.X.1 to X.10 show especially in Ex.X.10 that the plaintiff has signed in Tamil while so Ex.X.5 is a document which contains the signature of the plaintiff in English and the same has been procured for the purpose of transferring illegally the item no.5 Tractor in the name of the second defendant. He would submit that in such circumstances, the Trial Court has correctly come to a conclusion that the plea of oral partition was not proved and that the plaintiff is entitled for equal share.

16. After hearing the learned Senior Counsel for the appellant as well as the first defendant, the following point arises for determination in this appeal.
Whether the judgement of the Trial Court is correct in granting partition and allotment of 1/7th share to the plaintiff in respect of the first portion of item no.1, item no.2, item no.4, item no.5 and item no.6 of the suit schedule property and 1/28th share in respect of the second portion of item no.1 of the suit schedule property and as to whether the plaintiff is entitled for the decree of partition.

17. As I have narrated earlier the relationship between the parties are not in dispute and Muthusamy Naidu is the father of the plaintiff as well as defendants 2 to 6 and husband of the first defendant. It is seen that out of the 6 items of properties mentioned in the suit schedule, the third item which is the punja land to the extent of 1 acre comprised in Survey No.235 stands in the name of the second defendant under a registered sale deed dated 21.06.1973 the original of which was marked as Ex.B.3 and relied upon by the plaintiff on the copy marked as Ex.A.29. The Trial Court has now come to the conclusion that the said property is the absolute property of the second defendant and therefore, the plaintiff is not entitled for partition in respect of the same and the same has become final in the absence of any cross objection filed by the plaintiff.

18. Leaving the said item no.3 there are 5 other items mentioned in the suit schedule namely, item no.1,2,4,5 and 6. Out of the said properties item no.1 consist of two portions. The first portion is to the extent of 3 acres comprised in Survey No.235 in Thathapatti Village. That property was purchased by Muthusamy Naidu under a sale deed dated 29.08.1962 marked as Ex.A.1. In respect of the second portion of item

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no.1 of the suit schedule property the same is comprised in Survey No.234, 221, 221 B, 221 C and 222 to the total extent of 4.75 acres. As admitted by the defendants themselves, the said property was obtained by Muthusamy Naidu under a registered partition deed dated 04.05.1961 entered between his brothers Jaganatha Naidu, Gopalsamy Niadu and Kannan and his mother Thulasiammal @ Venkataammal marked as Ex.B.1. In the said partition deed the second portion of item no.1 of the suit schedule herein is mentioned as C schedule.

19. The case of the plaintiff is that the second portion of item no.1 allotted to Muthusamy Naidu has no income and Muthusamy Naidu has purchased the first portion of item no.1 under a sale deed dated 29.08.1962 marked as Ex.A.1 out of the income which he has earned from his business of running carts and purchasing and selling cattles in shandies. A reference to the evidence of the plaintiff examined as P.W.1 shows that her father Muthusamy Naidu was originally doing the business of cattle and also running the cart and after purchasing the lands he had done agricultural operation and he was running the cart on rental basis for 10 to 15 years from 1954. He has done the cattle business for 10 years. The evidence of the P.W.1 in this regard which runs as follows:

"என் பெரியப்பாவும் சித்தப்பாவும் விவசாயம் தான் செய்து வருகிறார்கள். எங்கள் மூதாதையர் பெரு நிலச்சுவான்தார்களாக வாழவில்லை. என் தகப்பனார் முதலில் எருது வியாபாரம் செய்தார். வண்டி ஓட்டினார். தோட்டம் வாங்கிய பிறகு விவசாயம் செய்து வந்தார். சுமார் 10 அல்லது 15 வருடம் வாடகை வண்டி ஓட்டினார். 1954லிருந்து ஓட்டினார். சந்தையில் மாட்டு வியாபாரம் 10 வருடம் செய்தார்."

20. To support the said contention, the plaintiff has examined one Rangasamy as P.W.2 who was closely associated with Muthusamy Naidu who has also stated that Muthusamy Naidu was doing commission business till 1975. The relevant portion as follows:

"வாதியின் தகப்பனார் முத்துசாமி நாயுடுவை தெரியும். ஆடு தரகு வியாபாரம் செய்த வகையில் அவர் எனக்கு பழக்கம். 30 ஆண்டுகளாக எனக்கு பழக்கம். நானும் சந்தைகளுக்கு சென்று மாடு, கன்று வாங்கி விற்கும் தரகு வியாபாரம் செய்து வந்தேன். துடியலூர், பள்ளபாளையம் ஆகிய ஊர்களுக்கு செல்வேன். ஊருக்குப் போயும் மாடு கன்று வியாபாரம் செய்வேன். சந்தைகளுக்கு முத்துசாமி நாயுடுவும் வருவார். சந்தைக்கு சந்தையில் ரூ.300/, ரூ.500/ அவருக்கு கிடைக்கும். 1975ம் வருடம் வரையில் அவர் தரகு வியாபாரம் செய்து வந்தார்."

The above portion of P.W.2 is elicited to find out the correctness of the contention raised on behalf of the appellants by stating as if there was a

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contradiction between the evidence of P.W.1 and P.W.2 and therefore, the evidence of P.W.1 should be rejected. On the face of it I do no think that there is any contradiction.

21. On the other hand, as correctly found by the Trial Court the second defendant who was examined as D.W.1 on 27.03.1991 when he was 40 years could have been only aged around 10 years in the year 1961 and therefore he was not in position to given evidence about the business carried on by his father at that time. Even though it is true that Nanjunda Gounder examined as D.W.4 on the side of the defendants has stated in the chief examination that Muthusamy Naidu was only doing agriculture and not business, it is relevant to point out that the first defendant who is the wife of Muthusamy Naidu and who was examined as D.W.2 has not spoken anything about the said aspects. If at all there was any person who would have known personally about the avocation of Muthusamy Naidu it should have been only the D.W.2. In the absence of any evidence from her side to the effect that Muthusamy Naidu was not doing business other than agriculture, I do not think that the evidence adduced on the side of the plaintiff especially by P.W.1 and P.W.2 can be lightly brushed aside, as correctly found by the learned Trial Judge. In addition to that as correctly found by the learned Trial Judge a reference has been made to the contents of Ex.A.1 sale deed dated 29.08.1962 under which Muthusamy Naidu purchased the property namely the first portion of item no.1 of the suit schedule, in which it is stated that Muthusamy Naidu has paid only Rs.800/- out of Rs.5,135/- being the sale consideration and on condition that he has to settle the mortgage debt. In such circumstances, there is absolutely no reason to interfere regarding the finding the Trial Court in that regard namely that the first portion of item no.1 of the suit schedule property to the extent of 3 acres covered under Ex.A.1 sale deed dated 29.08.1962 is the self acquired property of the said Muthusamy Naidu.

22. On the other hand it is relevant to point out that on the side of the defendants there is absolutely no evidence to show that there was any income from the second portion of item no.1 of the suit schedule property, which was got by Muthusamy Naidu as his portion under a partition deed Ex.B.1. In the absence of any such evidence there is absolutely nothing to infer that the first portion of itme no.1 of the suit schedule was purchased from and out of the income from the second portion of item no.1.

23. The further contention raised on behalf of the second defendant that in respect of item no.1 of the suit schedule property, there has been a oral partition among defendants 1,2,4 and 6, during the life time of Muthusamy Naidu who was laid down with heart attack around 1980 at his instance and with the help of his brother Gopalsamy Naidu by dividing both the first portion and second portion of item no.1 of the suit schedule

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property into three parts and subsequently on 27.01.1986 Muthusamy Naidu died, at the out set, as it is correctly found by the learned Trial Judge, when the plaintiff has issued a legal notice for partition before filing the suit on 10.07.1986 under Ex.A.3 she has clearly stated that she was entitled for 1/7th share in respect of all the properties. It is relevant to point out that in the reply notice given on behalf of the defendants on 22.07.1986 marked as Ex.B.4, there is no whisper about the said oral partition at all in respect of the two portions of item no.1. In the legal notice given on behalf of the plaintiff marked as Ex.A.3, the first portion of item no.1 of the suit schedule covered under Ex.A.1 is mentioned as item no.2.

24. Likewise, the second portion of item no.1 of the suit schedule covered under Ex.B.1 partition deed dated 04.05.1961 is mentioned as item no.3. On the other hand, it is relevant to point out that in the reply notice given on behalf of the defendants marked as Ex.A.4 was stated above, the defendants have specifically admitted that the plaintiff is entitled for a share in both item no.2 and 3 which are the first and second portions of item no.1 of the suit schedule as stated above. The relevant portion of Ex.A.4 reply notice, which runs as follows:

> "3. The properties referred to in your notice as item 2 and 3 are the properties belonging to the joint family of which the deceased V.Muthusamy Naidu was the Karta. After his death your client is entitled to only 1/28th share and not equal share with my clients No.2 to 4 as stated in your notice."

25. Therefore, it is clear that it is not only that at the earliest point of time the defendants have not stated about the so called oral partition stated to have been effected in 1980 but there is a specific admission that the plaintiff is entitled for a share in both the portions of item no.1, of course, stating that the plaintiff is entitled only for 1/28th share and not equal share. Therefore, on the face of it, it is too late for the defendants to still contend that there has been a oral partition. It is in this regard, the learned Trial Judge has also appreciated the evidence of D.W.2 namely, the first defendant who has stated that she has undergone an operation at Coimbatore one year before the death of Muthusamy Naidu and the Muthusamy Naidu was at Coimbatore. While Muthusamy Naidu was seriously ill at Coimbatore, there was no chance for him to travel to his village which is 60 k.ms. away. Further when it was the case of the defendants that the said oral partition was stated to have been effected at the instance of the brother of Muthusamy Naidu namely, Gopalsamy Naidu, the defendants have not chosen to examine him.

26. On the other hand, one Nanjunda Gounder was examined as D.W.4 who was not stated to be present at the time of oral partition in the

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pleadings and it was on the appreciation of the entire factual position, the Trial Court has correctly come to the conclusion that the averment that there was a oral partition in respect of item no.1 of the suit schedule property in 1980 was not proved. Therefore, I do not find any infirmity or illegality in respect of the decree and judgement by the Trial Court in respect of both the portions of item no.1 of the suit schedule property by allotting 1/7th share to the plaintiff in respect of the first portion and 1/28th share in respect of the second portion of item no.1.

27. It is also relevant to point out incidentally that in respect of item no.2 of the suit schedule property when the defendants have relied upon a deed of partition dated 11.04.1986 marked as Ex.B.4 which was entered within a period of three months from the date of death of Muthusamy Naidu, there is absolutely no recital about the so called oral partition effected regarding item no.1 of the suit schedule property.

28. In respect of the second item of the suit schedule property, it is true that under Ex.A.2 sale deed dated 04.06.1972 the father of the first defendant namely, Thirumalaisamy Naidu has sold the property to her for a consideration of Rs.10,000/-. But the question which was to be considered was as to whether at the time of purchase under Ex.A.2 the first defendant was having any independent source of income, when it was the specific case of the plaintiff that the said second item was purchased by Muthusamy Naidu in the name of his wife at the time when they were all living together. On the other hand, it is the admitted case of the defendants that the said item no.2 of the suit schedule property belonged to Muthusamy Naidu and after his death defendants 1,2,4 and 6 who are stated to have been enjoying the same and have decided to divide the same. In fact the learned Trial Judge has elicited the recital in the said partition deed Ex.B.4 wherein the parties have clearly admitted that the said property belonged to Muthusamy Naidu, which states:

> "எங்களில் 1 இலக்கமிட்டவரின் கணவரும் 2 முதல் 4 முடிய இலக்கமிட்டவர்களின் தகப்பனாருமான முத்துசாமி நாயுடுவுக்கு சாவ சுதந்திரத்துடன் பாத்யப்பட்டிருந்து அவர் 27.1.1986ல் காலமான பிறகு கீழ்கண்ட சொத்துக்களை நாங்கள் நால்வரும் பொதுவாக அனுபவித்து வருகிறோம் "

29. On the face of the said recital which amounts to specific admission under Ex.B.4, it is certainly not open to the defendants to still contend that the said properties belonged absolutely to the first defendant. As correctly found by the learned Trial Judge, the witness examined on the side of the defendants namely, Nanjunda Gounder examined as D.W.4 has specifically admitted that the first defendant had no independent business of her own and in such circumstances the decision arrived at by the learned Trial Judge regarding the item no.2 of the suit

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schedule property holding that the plaintiff is entitled for 1/7th share is on the basis of documents and evidence and deserves no interference.

30. As correctly found by the learned Trial Judge the fourth item of property is a house built up in the second item and inasmuch as it is on specific admission that second item of property is a self acquired property of Muthusamy Naidu, there is no difficulty to come to the conclusion that in the house build up in item no.2 which is mentioned as item no.4 in the suit schedule also the plaintiff is entitled for 1/7th share.

31. In respect of item no.5 mentioned in the suit schedule property it relates to a Tractor admittedly standing in the name of Muthusamy Naidu. While it is even the admitted case of the defendants in the written statement that Muthusamy Naidu purchased the Tractor by mortgaging the property which he has purchased under Ex.A.1 sale deed dated 29.08.1962 which is the first portion of item no.1 measuring to the extent of 3 acres of land and the said property has been held to be the self acquired property of Muthusamy Naidu to which the plaintiff is entitled for 1/7th share, there is no difficulty to come to the conclusion that the said Tractor belonged to Muthusamy Naidu. But in respect of the said property it is seen that the second defendant has taken steps to transfer the Tractor in his name after paying the balance amount to the Bank especially when it is admitted that Muthusamy Naidu during his life time paid Rs.61,833.70 and it was the case of the second defendant that all the sharers have given consent for effecting change in his name including the plaintiff. The plaintiff has specifically stated in the reply statement that he has not given any consent for the same. It is seen that the documents from the department have been called for. While all the other defendants have given consent for transferring the Tractor in the name of the second defendant, the second defendant relying upon the consent stated to have been given by the plaintiff in the letter marked as Ex.X.5 and the said signature was disputed by the plaintiff in the reply statement stating that the plaintiff is in the habit of signing always in Tamil and not in English. It is relevant to point out that in the letter addressed by the plaintiff to the Motor Vehicle Inspector on 11.06.1986 marked as Ex.X.10 signed by her in Tamil she has objected for the change. In fact a reference to Ex.X.5 and Ex.X.9 stated to have been signed by the plaintiff in English when compared to the admitted signature of the plaintiff under Ex.X.10 dated 11.06.1986 and in the plaint shows that the difference in signature especially in respect of initial 'D' of the plaintiff certainly differs and the plaintiff has put her signature in Tamil while Ex.X.5 and Ex.X.9 contains the name of the plaintiff in English. This has been correctly found on evidence by the Trial Court that Ex.B.5 has been prepared for the purpose of effecting transfer in respect of Tractor in the name of the second defendant. In such circumstances, the finding of

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the Trail Court that the Tractor belongs absolutely to Muthusamy Naidu is not perverse or wrong which deserves to be interfered by this Court.

32. In respect of item no.6 of the property, which is the amount due from Bannari Amman Sugars Ltd., the Trial Court has found that the 8th defendant has despatched various amounts to defendants 2,4 and 6 on various days much before filing of the suit which was filed on 10.09.1986 and therefore, only an amount of Rs.4,972.98 is lying with the 8th defendant.

33. In view of the above said factual position, I do not think that there is any illegality or irregularity by the Trial Court in respect of the said item also. Therefore, on a close analysis of the judgement of the Trial Court and after hearing the contention raised by the learned Senior Counsels appearing for the appellant and respondent, I have no hesitation to come to the conclusion that the judgement and decree passed by the Trial Court is not suffering from any illegality or perversity and the same is not wrong which deserves to be interfered with by this Court. In view of the same, the judgement and decree of the Court below passed in O.S.No.126 of 1986 dated 10.05.1996 is confirmed and the appeal stands dismissed with cost.

nbj

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge,
   Sobichettipalayak,
2. The Record Keeper, VR Section,
   High Court, Madras.

+ One cc to Mr. R.T. Doriasamy, Advocate sR 31552
+ One cc to Mr. S.M. Loganathan, Advocate sR 31666
+ One cc to Govt Pleadeer SR 31751

KU (co)
sg 14/8/07
Order in

A.S.No.596 of 1991
04.06.2007

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